

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 37 of 1993**

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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CHAUDHARI SHANKERBHAI KUBERBHAI & 7 - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MC BAROT for Applicant(s) : 1 - 8.
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR AD SHAH for Respondent(s) : 2 - 5.
NOTICE SERVED for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 26/10/2005

CAV JUDGMENT

1. The present Criminal Revision Application under Section 397 r/w Section 401 of CrPC, is moved by the petitioners- original accused against the judgment and

order of conviction and sentence dated 30.03.1991 passed by ld. JMFC, Patan in Criminal Case No. 229/1985 as well as the judgment and order dated 30.01.1993 passed by ld. Addl. Sessions Judge, Mehsana dismissing the Criminal Appeal No. 14/1991. The petitioners when present Cri. Rev. Application was moved, were 8, but now pending the Cri. Rev. Application, two of them have expired. Ld. APP Mr. NC Sood has confirmed that petitioner No.1 Chaudhari Shankarbhai Kuberbhai and petitioner No.6 Chaudhari Virambhai Ratnabhai have expired. Thus, the cause survived for petitioner Nos. 2 to 5, 7 & 8 i.e. original accused Nos. 2 to 4, 6, 9 & 10 and it stands abated so far as petitioner Nos. 1 & 6 i.e. original accused Nos. 1 & 7 are concerned. It stands disposed of qua them accordingly.

2. The petitioners are also shown as witnesses in a cross-case i.e. Criminal case No. 122/1985 tried and decided by the same ld. JMFC, Patan. Total four accused persons of cross-case have been held guilty for their involvement in different criminal offences and they are the petitioners before this Court of Cri. Rev. Application No. 36/1993. Both the Cri. Rev. Applications have been heard together in the interest of justice. In Criminal Case No. 229/1985, along with the present

petitioners, the police initially prosecuted 13 accused persons. However, pending Criminal Case, Criminal Appeal No.14/1991 and present Cri. Rev. Application, total 7 accused persons out of 13 have expired.

3(i) Vide judgment and order dated 30.03.1991 in Criminal Case No.229/1985, original accused Nos. 1 to 4,6, 8 to 12 have been held guilty for the offences punishable under sections 324, 326 read with section 149, as also under sections 147, 148, 447 of Indian Penal Code and imposed sentence as under:-

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
1	1 to 4,6,8 to 12	326 R/w 149 IPC	R/I 2 Years & fine of Rs.1000/ I/d S/I 6 Months, each.	Causing grievous hurt with dharia to P.W. Vela Visa.
2	-do-	-do-	-do-	Causing grievous hurt on other parts of body i.e. wrist of left hand of PW Vela Visa

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
3	-do-	324 R/w 149 IPC	R/I 4 Months & fine of Rs.500/ I/d S/I 3 Months, each.	Causing simply hurt by dharia on the head of PW Vela Visa.
4	-do-	-do-	-do-	Causing injury on the head of injured Vela Visa by deceased accused Raimal Mavji with dharia.
5	-do-	-do-	-do-	Causing injuries to PW Vala Kala on his right hand near left upper arm.
6	-do-	-do-	-do-	Causing injury with dharia to PW Bhagwan Visa
7	-do-	-do-	-do-	Causing injury near elbow of left hand of PW Bhagwan Visa with dharia.
8	-do-	-do-	-do-	Causing injury with dharia on the left hand of PW Jesing Ganesh

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
9	-do-	-do-	-do-	Causing injury with dharia on the left side ear of PW Jesing Ganesh
10	-do-	326 R/w 149 IPC	R/I 1 Year & Fine of Rs.1000/ I/d S/I 3 Months, each.	Causing injury on the right hand of PW Vala Kala with dharia
11	-do-	147 & 148 IPC	S/I 6 Months & Fine of Rs.500/, I/d S/I 3 Months, each.	Rioting with deadly weapons as member of unlawful assembly.
12	-do-	447 IPC	S/I 3 Months & Fine of Rs.500/, I/d S/I 1 ½ months, each.	For criminal trespass in the agricultural field where the offence is committed.

(ii) The learned Trial Judge held that victim PW Vela Visa, Vala Kala, Bhagwan Visa and Jesing Ganesh be paid Rs.5,000/, Rs.4,000/, Rs.2,000/ and Rs.2,000/ respectively from the amount recovered by way of fine from each of the accused persons. After conviction, all

the accused persons deposited total Rs.80,000/ as an amount of fine i.e. Rs.56,000/ and Rs.24,000/ on 30.03.1991 and 10.04.1991 respectively.

(iii) After hearing the appeal preferred by the convict accused, ld. Addl. Sessions Judge, Mehsana vide judgment dated 30.01.1993 dismissed the said appeal and confirmed the judgment and order of conviction and sentence passed by ld. JMFC, Patan.

4. The ld. Counsel Mr. MC Barot appearing for the petitioners accused has addressed the Court at length. He has taken this Court through the decisions ld. JMFC as well as of appellate Court and submitted that both the Courts below have committed gross error in evaluating the evidence and holding that the petitioners accused were the members of unlawful assembly and have committed criminal trespass in the agricultural field where the incident has happened and different offences have been committed. On the contrary, the evidence goes to suggest that the petitioners are the victim of the offences committed by other group of persons and when the Court has held them also guilty while deciding the cross-case, none of the accused persons could have been held responsible for the offences punishable under sections

147, 148 and/or 149 of IPC R/w either section 324 or 326 of IPC. The theory of elimination has not been applied by any of the Courts which is required as per the settled legal principles of criminal jurisprudence and there was ample scope for both the Courts below to apply the principle of minimum liability when the accused of cross-case are found guilty of serious offence punishable under section 325 etc. of IPC.

(i) Having considered the panchanama and other aspects including the nature of injuries found on the body of the prosecution witnesses and the place of incident, ld. Counsel Mr. Barot for the petitioners accused, after some deliberations and going through oral as well as medical evidence, has fairly accepted that the order of conviction is not bad that can be interfered in exercise of revisional jurisdiction being tow concurrent findings, but this Court at least should hold that the sentence imposed by the trial Court and confirmed by the Court of Sessions is very harsh, excessive and unwarranted and the accused ultimately were compelled to pay fine of Rs.80,000/ to have bail pending Criminal Trial and this Court should interfere with the order of sentence on merits as well as on account of intervening circumstances developed pending the criminal appeal and the present

Cri. Rev. application. This Court also should consider that ld.JMFC after order of conviction and sentence, has tried to compensate the injured witnesses adequately and reasonably good amount has been paid to them from the amount of fine recovered.

(ii) The victim injured are joined as party Respondents and ld. Counsel Mr. AD Shah appearing for the victim prosecution witnesses confirms that the victim, prosecution witnesses, have received the amount of compensation as per the judgment and order passed by the ld. JMFC. Mr. Barot has fairly submitted that the petitioners are not interested after his much of years in agitating against the order of conviction, but they are anxious to see that the quantum of punishment is reduced substantially and to minimum.

(iii) Ld. APP appearing for the State and ld. Counsel Mr. AD Shah for the respondents have fairly submitted that this Court may pass appropriate orders of reduction of substantive sentence. Of course, it is submitted by ld. APP that this Court, if decides to reduce the period of substantive sentence to minimum, then the amount of fine should be increased and that amount should be disbursed appropriately among the injured victims because

two of them have sustained very serious injuries and one of them had developed permanent partial disablement.

5. Ld. Counsel Mr. Barot has not pressed the present Cri. Rev. Application, in view of two concurrent findings of facts qua conviction and guilt established by the prosecution, so far as conviction of the petitioners accused recorded is concerned, and therefore, it is not necessary now to go into the detailed discussion of evidence led by the prosecution and alleged infirmities pointed out by ld. Counsel Mr. Barot for the petitioners accused.

6. As the present Cri. Rev. Application is not pressed on merits qua the order of conviction, adopting the reasons assigned by ld. JMFC as well as ld. Addl. Sessions Judge, Mehsana, the impugned judgment and order of conviction passed against the petitioners accused is hereby confirmed.

7. There is ample force in the arguments of ld. Counsel Mr. Barot that the order of sentence is comparatively harsh and accused convicts ought not to have been sentenced for each and all the offences for their respective wrong as a member of an unlawful assembly when

it has held the witnesses guilty in a cross-case. When all of them are held responsible for making assault with deadly weapon on prosecution witnesses who were there in the agricultural field, where incident has occurred. Imposition of fine for each injury found on the body of the person victim and separate sentence for each injury, technically, can be imposed, but the ld. Trial Judge has failed in considering material aspect that he has simultaneously dealt with a cross-case where some of the accused persons also are found with injuries of grave nature. The evidence to that effect is on record. Therefore only, accused of cross-case has been held guilty of the offences punishable under section 325 etc. of IPC. It is rightly pointed out by ld. Counsel Mr. Barot that PW Vala Kala has been held guilty of the offence punishable under section 326 of IPC in the cross-case and Kuber Visa is found responsible for the offence punishable under section 325 of IPC for causing injuries on the right hand of PW Kashiben. In the same way, PW Rughnath Kala is also found responsible of giving a dharia blow on an unarmed lady PW Kashiben and ld. JMFC has convicted PW Rughnath Kala for the offence punishable under section 325 of IPC. All of them have been asked to pay a fine. In this background, such a harsh order of sentence ought not to have been passed, considering the

total amount of fine imposed.

8. Ld. Counsel Mr. Barot has argued the second fold, that incident in question is of 1985 and after 20 years, if the accused are asked to go to jail, then it will disturb their entire social set up and this may also bring total social disappointment when they have started living cordial and harmonious life in the village. After 20 years, the accused persons have grown up of a very mature age. Three of them are senior citizens. It is not disputed by other side that the petitioner No.3 Parmabhai at present is aged about 84 years of age and petitioner No.5 Amrabhai Ratnabhai and petitioner No.7 Rughnathbhai Punabhai have reached the age of 60 & 62 years respectively. In the same way, the petitioners convict Devrajbhai Premabhai, Premabhai Kuberbhai and Umedbhai Parmabhai who were of 28, 22 & 21 years of age on the date of incident, have grown up to the age of 48, 42 and 41 years of age respectively. They have settled in their life and they have grown up children. Therefore, this court may not send the accused in jail and substantive sentence imposed by the ld. Trial Judge and confirmed by the Court of Sessions should be reduced to the period already undergone. It is not the say of the other side that after the order of bail, any of them have violated

any of the conditions imposed by the appellate Court or they have attempted to play with the witnesses examined by the prosecution pending trial. The details have been given to the Court and it appears that petitioner No.2 Devraj Parmabhai has remained in jail for 21 days, Parmabhai Vasabhai, Semabhai Kuberhai and Rughnathbhai Punabhai all have remained in jail for 18 days, Amrabhai Ratnabhai and Umedbhai Parmabhai have remained in jail for 21 days. Considering the gravity of the offence punishable under section 326 of IPC and that too when they are held guilty for the offence punishable under section 149 IPC simultaneously, the question posed before the Court is that whether the sentence can be reduced to minimum i.e. sentence already undergone ? The victim persons are before the Court and their say has also been considered. It is submitted that this Court may reduce the sentence to the period already undergone and if the Court thinks fit, some more amount of compensation may be paid from the increased amount of fine to four injured victims namely Vela Visa, Vala Kala, Bhagwan Visa and Jesang Ganesh. This Court and the Apex Court have reduced the period of sentence in certain cases keeping in view the background of the fact and other facts situation emerging from record. Theory and thoughts of Reformatory School can not be ignored in some cases. This court also

can not ignore one fact that out of 13 accused, 7 have died and some of the deaths have taken place prematurely. At one point of time, ld. Counsel Mr. Barot has tried to submit that one premature or early death among the relatives of the persons accused also sends adequate message to a wrong-doer and this Court, as it has been done by this Court and the Apex court in number of cases, should reduce sentence to the period already undergone and accused persons are ready to pay amount of fine if the same is increased. According to ld. Counsel Mr. Barot, it is not even necessary to increase an amount of fine because Rs.80,000/ by way of fine and compensation of Rs.40,000/ approximately paid to the victim in the year 1991, can not be said to be, keeping in mind inflation in economy, inadequate. Even today, this is a good amount. Of course, ld. Counsel Mr. Shah appearing for the injured victims is not sure as to what net amount has been received by each of the victim by way of compensation, but the language of the order passed by ld. JMFC is clear and reasonable some must have been received by them as compensation.

9. The recent trend of the Apex Court in some of the decisions is that protraction of litigation by itself should not be considered for reducing substantive

sentence imposed, but such a view is being expressed by the Apex Court in the cases where accused are found guilty for the offences punishable under The Prevention of Corruption Act, NDPS Act and/or Food Adulteration Act etc and that too in the facts and circumstances of each case. The offences involved in the present case are the offences against the body and the property of an individual and, therefore, while dealing with the point of quantum of punishment, the say of the victim or owner of the property is always found relevant and should not be ignored by the Court. The trial Judge while imposing substantive sentence, after hearing the accused on the point of sentence, should have asked a pointed question to the ld. Counsel defending the accused whether he would invite lesser period of substantive sentence by offering higher amount of compensation to the victim and the say of the ld. PP and submissions made by the ld. Counsel appearing for the defence could have been appreciated and order of sentence could have been passed. When the offence is against an individual and that too qua the offence against the body of a person -survived victim or the property, higher amount of compensation could have been awarded by deciding the adequacy of the compensation. The Court should remain conscious while reducing the sentence that reduction may not lead to

undesirable result. Of course, the Bombay High Court while dealing with the case of The State v/s Laxmichand Kevalram Ahuja, AIR 1955 Bombay 373, was dealing with the grave cases, but the observations made by the Court are found relevant when it is submitted that the sentence should be reduced to already undergone in the cases where accused have been held guilty of the offences punishable under section 326 R/w section 149 of IPC. Broad expanse of discretion is allowed by the legislation to the sentencing court, should not be narrowed only to the seriousness of the offence. Not a single such consideration can definitely determine the proper sentence. In arriving at a proper sentence, the Court must consider and sometimes, reject the many factors. The Court must recognize to learn to control and exclude many diverse data. It is observed in one of the decisions that it is a balancing act and tortious process to ensure reasoned sentence. The order of punishment and sentence should take the correct message to the Society and the same should have definite impact in the society or area where the wrong is committed and the victim may not also feel frustrated.

(i) Theory of punishment is considered by the Apex Court in the case of Jai kumar v/s State of M.P., (1999)5 SCC 1,

where the accused was facing charge of a murder of brother's wife and her daughter aged about 8 years. In the said decision, the Apex Court has observed that the punishment should be relatable to the gravity of the offence and has said that justice is supreme and justice ought to be beneficial for the society so that society is placed in a better-off situation. In the present case, the settlement of the accused in their regular life is one of the criterias and they have settled after first conviction recorded by the trial Court. Re-establishment of social harmony is another criteria which should be kept in mind especially when it comes to either group clashes or conflict between two families having large number of members. The Court should be careful while modifying the punishment and especially when it is to be reduced, then reduction should look sufficient to connect the offender to correct value. Sometimes, reduction to the satisfaction of the accused convict may help an individual accused in spiritual/behavioural improvement, but it should not be unfair to victim of the crime or to law-abiding citizens.

10. In the case of State of UP v/s Jodhasingh, 1990(1) CrLJ P.4, the Apex Court has decided not to send the accused to jail since the occurrence had taken place

nearly about 17 years ago and the accused were acquitted by the High Court more than before 11 years. While reversing the acquittal into conviction, the Supreme Court observed that the accused should not be sent to jail for serving out further period of imprisonment for the conviction awarded to them. It is true that in the present case, this Court is not dealing with the revision against the order of acquittal, but the fact remains that the incident in question had occurred on 06.10.1984 and the accused side had also sustained injuries when they assaulted the other side. Death of seven accused persons pending the proceedings is also one important circumstance. Element of deterrence in each order of punishment is not a must and it should only carry a message of existence and effect of rule of law.

11. The say of ld. Counsel Mr. Barot for the petitioners accused that even the present petitioners accused represented by him are ready to pay some more amount of fine, if increased, and entire sum can be given to the injured victim. This submission needs consideration in the background of the say of ld. Counsel Mr. AD Shah representing the victim and ld. APP for the State. So, if the amount of fine is doubled for the commission of the respective offences by the petitioners accused i.e.

Rs.2000/ instead of Rs.1000/ and Rs.750/ instead of Rs.500/, would serve the ends of justice. Out of the amount of fine recovered, the same be paid to the injured victims namely Vela Visa, Vala Kala, Bhagwan Visa and Jesang Ganesh at the ratio of 30%, 30%,20% and 20% respectively.

12. For the reasons aforesaid, the present Criminal Revision application is partly allowed. The impugned order of conviction passed by ld. JMFC,Patan and confirmed by ld. Addl. Sessions Judge, Mehsana is hereby confirmed. The order imposing substantive sentence is also confirmed but order imposing fine to the accused is hereby modified and altered as under :-

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
1	1 to 4,6,8 to 12	326 R/w 149 IPC	R/I 2 Years & fine of Rs.2000/ I/d S/I 6 Months, each.	Causing grievous hurt with dharia to P.W. Vela Visa.

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
2	-do-	-do-	-do-	Causing grievous hurt on other parts of body i.e. wrist of left hand of PW Vela Visa
3	-do-	324 R/w 149 IPC	R/I 4 Months & fine of Rs. 750/ I/d S/I 3 Months, each.	Causing simply hurt by dharia on the head of PW Vela Visa.
4	-do-	-do-	-do-	Causing injury on the head of injured Vela Visa by deceased accused Raimal Mavji with dharia.
5	-do-	-do-	-do-	Causing injuries to PW Vala Kala on his right hand near left upper arm.
6	-do-	-do-	-do-	Causing injury with dharia to PW Bhagwan Visa

Sr. No.	Accused Nos.	Offence	Punishment imposed	Criminal wrong held to be proved.
7	-do-	-do-	-do-	Causing injury near elbow of left hand of PW Bhagwan Visa with dharia.
8	-do-	-do-	-do-	Causing injury with dharia on the left hand of PW Jesing Ganesh
9	-do-	-do-	-do-	Causing injury with dharia on the left side ear of PW Jesing Ganesh
10	-do-	326 R/w 149 IPC	R/I 1 Year & Fine of Rs.2000/ I/d S/I 3 Months, each.	Causing injury on the right hand of PW Vala Kala with dharia
11	-do-	147 & 148 IPC	S/I 6 Months & Fine of Rs.750/, I/d S/I 3 Months, each.	Rioting with deadly weapons as member of unlawful assembly.
12	-do-	447 IPC	S/I 3 Months & Fine of Rs.750/, I/d S/I 1 ½ months, each.	For criminal trespass in the agricultural field where the offence is committed.

In default of payment of additional amount of fine, all the petitioners accused shall undergo S/I for 3 Months. As stated above, out of the additional amount of fine recovered, the victim injured persons namely Vela Visa, Vala Kala, Bhagwan Visa and Jesang Ganesh shall be paid the same proportionately at the rate of 30%, 30%, 20% and 20% respectively. The petitioners accused shall deposit the additional amount of fine within 10 days from the date of receipt of writ of this order to the trial Court. The trial Court shall accept the additional amount of fine and in turn shall disburse the entire sum to the victim injured as stated above. If the petitioners accused fail to deposit the amount of fine as aforesaid, they shall undergo further S/I of 3 months and in that eventuality the trial Court shall issue Non-Bailable Warrant against the petitioners to secure their presence so that they can be sent to serve the sentence imposed.

13. As observed earlier, Revision Application treated as abetted so far as petitioner No.1 Chaudhari Shankarbhai Kuberbhai and petitioner No.6 Chaudhari Virambhai Ratnabhai are concerned, on account of their death.

Rule is made absolute accordingly.

(C.K. BUCH, J)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION No. 15003 of 2005
In
CRIMINAL REVISION APPLICATION No. 37 of 1993**

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**CHAUDHARI SHANKERBHAI KUBERBHAI & 7 - Applicant(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)**
=====

Appearance :

MR MC BAROT for Applicant(s) : 1 - 8.
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.
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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 21/12/2005

ORAL ORDER

Heard ld. Counsel Mr. MC Barot for the applicants accused and ld.APP Mr. AY Kogje for the respondent State.

By moving the present Cri. Misc. Application, the applicants accused have prayed to correct the mistake occurred in the judgment. Ld. Counsel Mr. MC Barot appearing for the applicants accused states that one apparent mistake emerging from the judgment dated 26.10.2005 in Cri. Revision Application No.37/1993 requires to be corrected. By the said judgment, this Court finally disposed of the said Cri. Rev.Application. Copy of the said judgment is produced by the ld. Counsel appearing for the applicants.

It is the say of the applicants that it appears that the Court has erroneously mentioned in para-12 (fourth line) of the said judgment that "the order imposing substantive sentence is also confirmed" while enhancing the amount of fine imposed by modifying the quantum of punishment imposed by the Court.

Ld. Counsel Mr. Barot has rightly pointed out following part of the decision from substantive para-8 of

the judgment;

"Therefore, this Court may not send the accused in jail and substantive sentence imposed by the ld. Trial Judge and confirmed by the Court of Sessions should be reduced to the period already undergone."..... "The question posed before the Court is that whether the sentence can be reduced to minimum i.e. sentence already undergone? ".... "This Court also can not ignore one fact that out of 13 accused, 7 have died and some of the deaths have taken place prematurely. At one point of time, ld. Counsel Mr. Barot has tried to submit that one premature or early death among the relatives of the persons accused also sends adequate message to a wrong-doer and this Court, as it has been done by this Court and the Apex Court in number of cases, should reduce sentence to the period already undergone and accused persons are ready to pay amount of fine if the same is increased." "Even today, this is a good amount. Of course, ld. Counsel Mr. Shah appearing for the injured victims is not sure as to what net amount has been received by each of the victim by way of compensation, but the language of the order passed by ld.JMFC is clear

and reasonable sum must have been received by them as compensation."

It is observed in para-11 of the judgment that:-
"....This submissions needs consideration in the background of the say of ld. Counsel Mr. AD Shah representing the victim and ld. APP for the State. So, if the amount of fine is dohbled for the commission of the respective offences by the petitioners accused i.e. Rs.2000/ instead of Rs.1000/ and Rs.750/ instead of Rs.500/, would serve the ends of justice."

In view of above discussion, this Court in para-12 ought to have held and directed that the order imposing substantive sentence stands modified and substantive sentence imposed is reduced to the period already undergone. Hence, said mistake requires to be corrected. Accoridngly it is held that the order imposing substantive sentence imposed stands modified and substantive sentence imposed is reduced to the period already undergone, so that the applicants may not have to go to prison after a lapse of period of about 7 years.

In view of above, the following portion of para-12 of the judgment i.e. " The order imposing substantive

sentence is also confirmed" requires to be deleted and substituted by the following portion:-

"The order imposing substantive sentence is hereby modified and substantive sentence imposed is hereby ordered to be reduced to that of the period already undergone by the accused persons".

Registry shall carry out necessary correction in para-12 of the judgment as stated above. Copy of this order also shall be kept along with the judgment dated 26.10.2005. Registry shall issue fresh writ of the judgment dated 26.10.2005 duly corrected. Time to deposit fine amount is also extended for a period of 10 days from the date of receipt of writ of the duly corrected judgment dated 26.10.2005.

Application is allowed in above terms. ld. APP Mr. Kogje has nothing to add.

D.S. Permitted.

(C.K. BUCH, J)

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